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November 2, 2006

VIA HAND DELIVERY

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 06-172: In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas

Dear Ms. Dortch:

NuVox Communications and XO Communications, Inc., through counsel and pursuant to 47 C.F.R. § 1.106, hereby submit for filing in the above-captioned proceeding their Reply to Verizon's Opposition to Petition for Reconsideration of Protective Order, and four (4) copies of the same. Please feel free to contact the undersigned counsel at (202) 342-8625 if you have any questions regarding this filing.

Respectfully submitted,



Brett Heather Freedson

cc: Jeremy Miller, Wireline Competition Bureau
Tim Stelzig, Wireline Competition Bureau


CERTIFICATE OF SERVICE

I, Brett Heather Freedson, hereby certify that true and correct copies of the foregoing Reply in WC Docket No. 06-172 were delivered via email and first class mail, postage pre-paid, this 2nd day of November 2006, to the individuals on the following list:

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petitions of the Verizon Telephone Companies)	
for Forbearance Pursuant to 47 U.S.C. § 160(c))	WC Docket No. 06-172
in the Boston, New York, Philadelphia,)	
Pittsburg, Providence and Virginia Beach)	
Metropolitan Statistical Areas)	

To the Wireline Competition Bureau

REPLY

NuVox Communications and XO Communications, Inc. (the “CLEC Petitioners”), through counsel and pursuant to 47 C.F.R. § 1.106, submit this Reply to the Opposition to Petition for Reconsideration of Protective Order of the Verizon Telephone Companies (“Verizon”) and the Comments of Cox Communications, Inc. (“Cox”) in the above-captioned proceeding.¹ The modest changes requested by the CLEC Petitioners to the Protective Order in this proceeding strike the appropriate balance between, on one hand, maintaining the confidentiality of business information disclosed to the Federal Communications Commission (“Commission”) for purposes of evaluating forbearance petitions under 47 U.S.C. § 160, and on the other hand, providing interested parties the ability to fully participate, through the comment process, in current and future Commission proceedings where the same or similar forbearance relief is requested.²

¹ Opposition to Petition for Reconsideration of Protective Order of the Verizon Telephone Companies, WC Docket No. 06-172 (filed Oct. 26, 2006) (“Verizon Opposition”); Comments of Cox Communications, Inc. on Petition for Reconsideration of Protective Order, WC Docket No. 06-172 (filed Oct. 26, 2006) (“Cox Comments”).

² Petition for Reconsideration of Protective Order of NuVox Communications and XO Communications, Inc., WC Docket No. 06-172 (filed Oct. 16, 2006) (“Petition for Reconsideration”).

At a minimum, the Commission should adopt procedures that provide interested parties a reasonable opportunity to access and use the confidential information submitted in this proceeding, including any confidential information referenced or relied upon in the final Commission Order on the merits of the Verizon Petitions,³ upon a fact-specific showing that the proposed use of such information is necessary to ensure their full participation in other forbearance proceedings and would enhance the record before the Commission in other forbearance proceedings, thereby serving the public interest.

The relief requested by the CLEC Petitioners is narrow in scope, and would not subject any confidential information submitted to the Commission in this proceeding to general public disclosure. To the contrary, such confidential information would remain subject to *all* of the safeguards provided by the Protective Order,⁴ except that authorized parties would be permitted to use the confidential information set forth in the Verizon Petitions, and other supporting documents, for the limited purpose of commenting on the same or similar forbearance requests, in current and future proceedings before the Commission. Importantly, as the Protective Order requires, any confidential information submitted to the Commission by Verizon would be made available only to those parties who expressly agree to honor the terms and

³ See *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston Metropolitan Statistical Area*; *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the New York Metropolitan Statistical Area*; *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Philadelphia Metropolitan Statistical Area*; *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Pittsburgh Metropolitan Statistical Area*; *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Providence Metropolitan Statistical Area*; *Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Virginia Beach Metropolitan Statistical Area*, WC Docket No. 06-172 (consolidated) (filed Sept. 6, 2006) (the “Verizon Petitions”).

⁴ In the Matter of the Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas Pursuant, WC Docket No. 06-172, Protective Order, DA 06-1870 (Sept. 14, 2006) (“Protective Order”).

conditions of the Protective Order, by executing and filing the appropriate Protective Order Acknowledgement,⁵ and would be redacted from all public filings.⁶ The modifications to the Protective Order proposed by the CLEC Petitioners are appropriately tailored to minimize disclosure of confidential information, and would not reasonably discourage any interested party from submitting to the Commission, on a voluntary basis, any business data necessary to evaluate the Verizon Petitions, subject to the requirements of 47 U.S.C. § 160.

The Verizon Opposition concedes that the Commission, consistent with its own precedent, may effect changes to the Protective Order that would permit interested parties to access and use confidential information submitted in this proceeding, including the final Commission order on the merits of the Verizon Petitions, in current or future Commission proceedings where the same or similar forbearance relief is requested.⁷ Specifically, upon review of its existing policies regarding the treatment of confidential information, the Commission expressly reserved its right to authorize broader uses of protected materials, in multiple Commission proceedings, where the public interest demands.⁸ Consistent with its *Confidential Information Order*, the Commission, upon request, granted several modifications to the protective order in its non-rural universal service support proceeding, as necessary to further the parties' development of the factual record in a separate Commission proceeding to review the universal service support amount remanded by the Court of Appeals for the Fifth Circuit.⁹ Thus,

⁵ Protective Order ¶ 3(a) and Attachment A.

⁶ *Id.* ¶ 5.

⁷ See Verizon Opposition 3, 5.

⁸ *In the Matter of Examination on the Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816 (rel. Aug. 4, 1998) ¶ 31 (“*Confidential Information Order*”).

⁹ *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low Volume Long Distance Users; Federal-State Joint Board on*

the relief requested by the CLEC Petitioners fully comports with the Commission's longstanding practices on maintaining the confidentiality of sensitive business information, and therefore should be granted.

The public interest demands certain modifications to the Protective Order that would permit the use of confidential information submitted in this proceeding, including any confidential information referenced or relied upon in the final Commission order on the merits of the Verizon Petitions, in current and future Commission proceedings to evaluate the same or similar forbearance requests under 47 U.S.C. § 160. As discussed more fully in the Petition for Reconsideration, access to and use of the confidential information ultimately relied on by the Commission in rendering its forbearance determinations here is critical to allowing interested parties to properly assess whether the market-specific data submitted to the Commission in other forbearance proceedings satisfies the requirements of 47 U.S.C. § 160.¹⁰ Moreover, without modification, the Protective Order would foreclose interested parties from fully participating in current and future forbearance proceedings, particularly to the extent that the petitioning party has based its request for the same or similar forbearance relief on the framework employed or the precedent established by the Commission in this proceeding, and to the extent the Commission chooses to utilize the framework established in this proceeding.¹¹

At a minimum, the Commission should adopt procedures that provide interested parties a reasonable opportunity to access and use the confidential information submitted in this proceeding, including the final Commission Order on the merits of the Verizon Petitions, upon a fact-specific showing that the proposed use of such information is necessary to ensure their full

Universal Service, CC Docket Nos. 96-262, 94-1, 99-249 and 96-45, Order, DA 02-1027, 17 FCC Rcd 8252 (rel. May 6, 2002) ¶¶ 3, 7, 8.

¹⁰ Petition for Reconsideration 3.

¹¹ *Id.*

participation in other forbearance proceedings and would enhance the record before the Commission in other forbearance proceedings, thereby serving the public interest.¹²

As a final matter, the CLEC Petitioners do not oppose the modifications to the Protective Order suggested by Cox which would place enhanced restrictions on the exchange of certain highly confidential information, except to the extent that such modifications would preclude the use of any protected materials in current and future Commission proceedings where the same or similar forbearance relief is requested.¹³ Specifically, the CLEC Petitioners do not oppose modifications to the protective order that would permit interested parties to file highly confidential information separately from other information, with a specific designation of sensitivity, and subject to reasonable copying restrictions.¹⁴ Moreover, the CLEC Petitioners do not oppose Cox's suggestion that the Commission permit the party that submits highly sensitive information an opportunity to comment if there is a request for release of the highly sensitive data or if the Commission is considering releasing that data on its own motion.¹⁵

CONCLUSION

For the reasons set forth herein, and in the Petition for Reconsideration, the Commission should modify the Protective Order in the above-captioned proceeding to permit the use of confidential information submitted in this proceeding by authorized parties, for purposes of analyzing and responding to the same or similar forbearance requests under 47 U.S.C. § 160. At a minimum, the Commission should adopt procedures that provide interested parties a

¹² See *Confidential Information Order* ¶ 31 (“A party seeking to use protected information obtained in one proceeding in another proceeding may file a petition with the Commission explaining why such use of the protected information is appropriate. Any such petition shall ensure that any protected information contained in or accompanying the petition is protected from public disclosure.”).

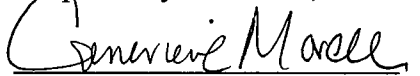
¹³ Cox Comments 5-6.

¹⁴ *Id.*

¹⁵ *Id.*

reasonable opportunity to access and use the confidential information submitted in this proceeding, including any confidential information referenced or relied upon in the final Commission Order on the merits of the Verizon Petitions, upon a fact-specific showing that the proposed use of such information is necessary to ensure their full participation in other forbearance proceedings and would enhance the record before the Commission in other forbearance proceedings, thereby serving the public interest.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Genevieve Morelli", is written over a horizontal line.

Brad E. Mutschelknaus

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Dated: November 2, 2006